

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

ANDREW J. SCHAFF,

Plaintiff,

vs.

**5:22-CV-302
(TJM/ATB)**

**BRIGHTON TOWERS RESIDENT'S ASSOCIATION,
CINDY CURTIS, President of Brighton Towers
Resident's Association, DENNIS HOUGH, Vice
President and Secretary of Brighton Towers
Resident's Association, SHARON MILLER,
Treasurer of Brighton Towers Resident's Association,
PENNY MUTTER, Building Rep. 1 of Brighton Towers
Resident's Association, and SHARRON REDMOND,
Vice President of Brighton Towers Resident's
Association,**

Defendants.

**Thomas J. McAvoy,
Sr. U.S. District Judge**

DECISION & ORDER

The Court referred this Complaint to Magistrate Judge Andrew T. Baxter for a Report-Recommendation pursuant to 28 U.S.C. § 636(b) and Local Rule 72.3(c). Plaintiff alleges that Defendants, the Resident's¹ Association and officials of that Association in the building where he lives, violated his rights under federal anti-discrimination and housing

¹The Complaint and the case caption use this formulation in describing the Defendant, which the Court suspects might be better rendered as "Residents' Association" or "Residents Association." The Court uses the form stated in the Complaint for consistency.

law. Plaintiff filed a Complaint and motion for leave to proceed *in forma pauperis*, which caused Judge Baxter to give the Complaint an initial review to determine whether the action should be served on the Defendants.

Judge Baxter's Report-Recommendation, dkt. # 4, issued on April 4, 2022, recommends that the Court dismiss Plaintiff's claims against the individual Defendants with prejudice. Judge Baxter concludes that none of the claims Plaintiff seeks to raise may be brought against individual defendants. Judge Baxter also recommends that the Court dismiss with prejudice any claim brought pursuant to the Housing Community Development Act of 1974 or federal regulations. Finally, Judge Baxter recommends that the Court dismiss without prejudice Plaintiff's claims brought against the Brighton Towers Resident's Association pursuant to Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d. Plaintiff, he finds, did not clearly allege that the Resident's Association received federal funding. Plaintiff also failed to allege that the Association acted against him because of his race.

No party objected to the Report-Recommendation. The time for such objections has passed. After examining the record, this Court has determined that the Report-Recommendation is not subject to attack for plain error or manifest injustice and the Court will accept and adopt the Report-Recommendation for the reasons stated therein.

Accordingly,

The Report-Recommendation of Judge Baxter, dkt. # 4, is hereby **ACCEPTED** and **ADOPTED**. Plaintiff's Complaint is hereby dismissed for failure to state a claim, as follows:

1. The Complaint is hereby **DISMISSED WITH PREJUDICE** to the extent that Plaintiff raises any claims pursuant to the Housing Community Development Act of 1974;
2. The Complaint is hereby **DISMISSED WITH PREJUDICE** to the extent that Plaintiff raises any claims pursuant to 24 C.F.R. §§ 245.100-245.110;
3. The Complaint is hereby **DISMISSED WITH PREJUDICE** to the extent that Plaintiff attempts to bring claims against individual Defendants Curtis, Hough, Miller, Mutter, and Redmond pursuant to Title VI the Civil Rights Act of 1964; and
4. The Complaint is hereby **DISMISSED WITHOUT PREJUDICE** with respect to any claims that Plaintiff seeks to bring against Defendant Brighton Towers Resident's Association pursuant to Title VI of the Civil Rights Act of 1964.

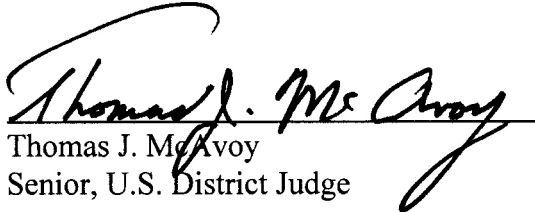
Plaintiff may file an Amended Complaint within forty-five (45) days of the date of this order.

The Plaintiff is advised that ANY AMENDED PLEADING MUST BE A **COMPLETE PLEADING, WHICH WILL SUPERCEDE THE ORIGINAL COMPLAINT IN ALL RESPECTS**, PLAINTIFF MUST INCLUDE ALL THE REMAINING FACTS AND CAUSES OF ACTION IN THE AMENDED COMPLAINT. **NO FACTS OR CLAIMS FROM THE ORIGINAL COMPLAINT MAY BE INCORPORATED BY REFERENCE.**

If Plaintiff files an Amended Complaint within the time directed by the Court, the Clerk of Court shall refer that Amended Complaint to Judge Baxter for initial review.

IT IS SO ORDERED.

Dated: April 28, 2022


Thomas J. McAvoy
Senior, U.S. District Judge